UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

PAUL HARRIS STORES, INC., et al.,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	**CAUSE NO. 1:02-cv-1014-LJM/VSS**
	)	
PRICEWATERHOUSE COOPERS LLP,	)	
	)	
Defendant.	)	

ENTRY ON MOTION TO COMPEL

This cause is before the magistrate judge on the plaintiffs' motion entitled Motion to Compel Rule 30(b)(6) Deposition on State Tax Issues. The motion is fully briefed, and the magistrate judge, being duly advised, resolves it as follows.

As an initial matter, the defendant argues, correctly, that the plaintiffs were required to seek leave of court before serving its Rule 30(b)(6) notice because they already have conducted a Rule 30(b)(6) deposition (several, actually) in this case. However, in the interest of efficiency, the magistrate judge will not quash the notice on that ground, inasmuch as a motion for leave to serve the notice would have been granted had one been filed.

The defendant also objects to the notice on substantive grounds. In its words, "PwC's objections are based, in large part, on the grounds that the state tax law claim and the deposition notice are so fundamentally inconsistent with the roles and responsibilities of an outside auditor, as well as the terms of the underlying engagement letter between Paul Harris and PwC, that no deposition should proceed." Defendant's Response at 2. In other words, the defendant believes that the plaintiffs' claims relating to the state tax issue are meritless, as a matter of law and therefore it does not believe it should be required to participate in discovery regarding them.

Unfortunately for the defendant, however, the standard for discovery depends upon the claims and defenses that have been asserted by the parties, not the claims and defenses that the parties agree may have merit.

That said, the magistrate judge agrees that it would be a waste of resources to proceed with discovery on this discrete issue if the defendant is correct regarding the ultimate fate of the issue. Accordingly, the defendant has a choice: It may proceed with the deposition requested by the plaintiffs, or it may, **within 10 days of the date of this Entry**, file a motion for partial summary judgment on the state tax issue. In the event that such a motion is filed, the deposition (and any other discovery on the issue) will be stayed pending the court's ruling on the motion. The magistrate judge believes that the current case management schedule will allow sufficient time for this discovery to be conducted after the court's ruling in the event the defendant does not prevail, and the parties certainly have plenty of other discovery to keep them busy in the meantime.

The magistrate judge is confident that the defendant's additional objections to the notice, such as overbreadth and vagueness, can be resolved by the parties, and specifically by discussion between counsel to clarify exactly what information the plaintiffs are seeking.

SO ORDERED: 04/29/2005

V. Sue Shields

V. Sue Shields, Magistrate Judge

Distribution list attached

Copies to:

James J. Boland
KIRKLAND & ELLIS
jboland@kirkland.com

Andrea L. Cohen
RUBIN & LEVIN, PC
acohen@rubin-levin.net

Edward Wesley Harris, III
SOMMER BARNARD ATTORNEYS, PC
eharris@sommerbarnard.com
kreskevich@sommerbarnard.com

Carl A. Hayes
MCTURNAN & TURNER
chayes@mtlitig.com
cmcclintock@mtlitig.com

Elizabeth S. Hess
KIRKLAND & ELLIS
ehess@kirkland.com

Jonathan E. Hinkemeyer
KIRKLAND & ELLIS LLP
jhinkemeyer@kirkland.com

John C. Hoard
RUBIN & LEVIN, PC
johnh@rubin-levin.net

John R. Humphrey
SOMMER BARNARD ATTORNEYS, PC
jhumphrey@sommerbarnard.com

Richard A. Kempf
SOMMER BARNARD ATTORNEYS, PC
rkempf@sommerbarnard.com

Elliott D. Levin
RUBIN & LEVIN
edl@rubin-levin.net

Robert J. Kopecky
KIRKLAND & ELLIS
rkopecky@kirkland.com
jwhittingham@kirkland.com

John F McCauley
MCTURNAN & TURNER
jfm@mtlitig.com
leuler@mtlitig.com;snelson@mtlitig.com

Lee B. McTurnan
MCTURNAN & TURNER
lmcturnan@mtlitig.com
gsmith@mtlitig.com

Kenneth J. Munson
MCTURNAN & TURNER
kmunson@mtlitig.com leuler@mtlitig.com

Gayle A. Reindl
SOMMER BARNARD ATTORNEYS, PC
greindl@sbalawyers.com
thuber@sbalawyers.com

Jennifer E. Riley
RUBIN & LEVIN, PC
jennifer@rubin-levin.net

Geoffrey Slaughter
SOMMER BARNARD ATTORNEYS, PC
gslaughter@sommerbarnard.com
jliddle@sommerbarnard.com

Christopher M.R. Turner
KIRKLAND & ELLIS LLP
cmturner@kirkland.com